



The following constitutes the order of the court.
Signed April 15, 2015

William J. Lafferty, III

William J. Lafferty, III
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

In re

Evan Charles Eldridge,

Debtor.

No. 11-48077

Chapter 13

Martha G. Bronitsky,
Chapter 13 Standing Trustee,

Plaintiff,

Adv. Pro. No. 14-04180

v.

The Hassan and Fay Eshan
Trust, and

Hassan Ehsan, Trustee of the
Hassan and Fay Eshan Trust,

Defendants.

MEMORANDUM REGARDING APPLICATION TO CORRECT JUDGMENT

This adversary proceeding was filed by the Chapter 13
Standing Trustee ("Plaintiff") under section 542 of the

1 Bankruptcy Code to recover \$22,387.98 from The Hassan and Fay
2 Eshan [sic] Trust, and Hassan Ehsan, Trustee of the Hassan and
3 Fay Eshan [sic] Trust ("Defendants") that was distributed to
4 the Defendants in error during the related chapter 13 case.
5 The Defendants did not answer the Plaintiff's complaint, and a
6 *Default Judgment* was entered on March 10, 2015. The *Default*
7 *Judgment* was entered against "The Hassan and Fay Eshan Trust,
8 and Hassan Eshan, Trustee of the Hassan and Fay Eshan Trust."
9 The adversary proceeding was closed on March 25. On March 27,
10 Plaintiff filed an *Application to Correct Judgment Pursuant to*
11 *FRCP 60(a) as Incorporated under Bankruptcy Rule 9024*. The
12 *Application* requests the *Default Judgment* be corrected to list
13 the Defendants as "The Hassan and Fay Ehsan Trust," and "Hassan
14 Ehsan, Trustee of the Hassan and Fay Ehsan Trust," the correct
15 names. This memorandum first discusses the relevant procedural
16 history, and then evaluates whether the spelling error can be
17 corrected under Rule 60(a).

21 Discussion

22 I. Relevant Procedural History

23 Although the Trust and Trustee did not respond to the
24 complaint in this adversary proceeding, the Trust and Trustee
25 participated in the related bankruptcy case. The Trustee filed
26 a proof of claim on behalf of the Trust on August 26, 2011,
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1 listing the creditor as "The Hassan and Fay Eshan Trust."
2 Shortly thereafter, on August 30, 2011, the Trust obtained
3 counsel, Clayton & McEvoy, P.C., and counsel filed an amended
4 proof of claim which listed the creditor as "The Hassan and Fay
5 Ehsan Trust." Counsel for the Trust also filed a request for
6 notice, an objection to a motion to avoid the Trust's lien, and
7 an objection to the Debtor's plan. At a plan confirmation
8 hearing on November 10, 2011, Laurence McEvoy appeared on
9 behalf of the Trust and withdrew the two objections. The plan
10 was confirmed.
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12 On September 22, 2014, the Chapter 13 Standing Trustee
13 filed an adversary proceeding against "The Hassan and Fay Eshan
14 Trust" (hereinafter "First Adversary Proceeding"). See *Martha*
15 *G. Bronitsky, Chapter 13 Standing Trustee v. The Hassan and Fay*
16 *Eshan Trust*, AP No. 14-04130 (Bankr. N.D. Cal. Sept. 22, 2014).
17 The court scheduled a status conference in the First Adversary
18 Proceeding *sua sponte*, which was held on December 3, 2014.
19 Plaintiff's counsel was the only party to appear at the status
20 conference, and the court discussed with Plaintiff's counsel
21 whether the Trustee of The Hassan and Fay Eshan Trust should be
22 added as a defendant to the adversary proceeding. On December
23 8, the Moran Law Group filed a notice of appearance on behalf
24 of the Hassan and Fay Ehsan Trust in the First Adversary
25 Proceeding.
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1 Proceeding. On December 10, the Chapter 13 Standing Trustee
2 voluntarily dismissed the First Adversary Proceeding, and filed
3 this adversary proceeding which includes both the Trust and
4 Trustee as defendants.

5 In this adversary proceeding, a copy of the complaint was
6 served by certified mail to Clayton & McEvoy, P.C., The Hassan
7 and Fay Eshan Trust, and Hassan Eshan. The Moran Law Group was
8 not served with a copy of the complaint and summons. Clayton &
9 McEvoy, P.C. filed a letter in the adversary proceeding after
10 receiving the complaint, and notified the court that the firm
11 withdrew its representation of Hassan Ehsan individually and as
12 trustee of the Hassan and Fay Ehsan Trust in February 2012.
13 There were no other responses filed, and a default judgment was
14 entered on March 10, 2015.

17 II. Rule 60(a) and Rule 59(e)

18 Plaintiff cites Federal Rule of Civil Procedure ("FRCP")
19 60(a), as incorporated by Federal Rule of Bankruptcy Procedure
20 ("FRBP") 9024, as grounds to correct the judgment to reflect
21 accurately the names of the Defendants. FRCP 60(a) allows the
22 court to "correct a clerical mistake or a mistake arising from
23 oversight or omission whenever one is found in a judgment."
24 Fed. R. Civ. P. 60(a). The correction can be made after
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1 motion, or by the court *sua sponte*, and can be made with or
2 without notice. *Id.*

3 FRCP 59(e), as incorporated by FRBP 9023, allows the court
4 to alter or amend a judgment. Fed. R. Civ. P. 59(e). Under
5 FRCP 59(e), a motion to alter or amend a judgment must be filed
6 within 28 days after the entry of the judgment, and FRBP 9023
7 reduces the 28 day deadline to 14 days. Fed. R. Bankr. P.
8 9023. In a recent Ninth Circuit Court of Appeals decision,
9 *Tattersalls, Ltd. v. DeHaven*, 745 F.3d 1294 (9th Cir. 2014),
10 the Ninth Circuit explained that a judgment can be corrected
11 under Rule 60(a) for clerical errors, oversights, and
12 omissions, but if a court makes a substantive change in its
13 decision, the judgment must be amended under Rule 59(e).¹

16 The Ninth Circuit has also considered whether a misspelled
17 party's name on a judgment can be corrected using Rule 60(a).
18 In a 2009 Ninth Circuit decision, *Catz v. Chalker*, 566 F.3d 839
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21 ¹ *Id.* at 1298. See also *Garamendi v. Henin*, 683 F.3d 1069, 1077 (9th
22 Cir. 2012) (distinguishing FRCP 59(e) from FRCP 60(a)). In
23 *Tattersalls, Ltd. v. DeHaven*, the District Court held for the plaintiff
24 but did not initially award damages. The District Court instructed the
25 plaintiff to amend the judgment under FRCP 59(e) once damages became
26 certain, and in doing so, overlooked the 28 day deadline to file a
27 motion under FRCP 59(e). After becoming aware that the deadline had
28 expired, the court allowed the judgment to be amended under FRCP 60(a).
The Ninth Circuit affirmed because the District Court was not making a
substantive change to its decision, and always intended to award
damages. *Id.* at 1299. According to the Ninth Circuit, "[t]he basic
distinction between clerical mistakes and mistakes that cannot be
corrected pursuant to Rule 60(a) is that the former consist of blunders
in execution whereas the latter consist of instances where the court
changes its mind." *Id.* at 1297 (quoting *Blanton v. Anzalone*, 813 F.2d
1574, 1577 n. 2 (9th Cir. 1987) (internal quotation marks omitted)).

1 (9th Cir. 2009), the Ninth Circuit indicated Rule 60(a) can be
2 applied to correct a misspelled party's name on a judgment. In
3 *Catz v. Chalker*, the District Court awarded attorney fees to
4 the defendant, but the plaintiff's name was incorrectly spelled
5 in the caption of the judgment. *Id.* at 840. The plaintiff
6 filed a motion to amend the judgment and correct the spelling,
7 and cited FRCP 59(a). The defendant did not oppose the motion,
8 and the court amended the judgment. The plaintiff then appealed
9 entry of the judgment. The primary issue before the Ninth
10 Circuit was whether the plaintiff's filing of the motion tolled
11 the time to appeal the judgment. The Ninth Circuit determined
12 that the plaintiff should have brought the motion under Rule
13 60(a), instead of Rule 59(a), because correcting the
14 plaintiff's name in the judgment was a clerical mistake. See
15 *id.* at 841. The court concluded that the time to appeal was
16 tolled. *Id.* at 842.

19 III. Application

20 In this adversary proceeding, the name "Eshan"/"Ehsan"
21 appears three times. The Plaintiff erred by misspelling
22 "Ehsan" as "Eshan" twice in the complaint's caption. "Ehsan"
23 was correctly spelled once in the complaint's caption, but was
24 transcribed incorrectly by the Clerk of Court and is misspelled
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1 "Eshan" on the docket. The *Default Judgment* misspells "Ehsan"
2 as "Eshan" three times.

3 The misspelling which resulted from a transcription error
4 made by the Court clearly falls within the framework of FRBP
5 9024, and can be corrected by the Court without notice. At
6 issue is whether the two additional errors which originated in
7 the Complaint's caption can be corrected under FRBP 9023 or
8 9024.
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10 Applying the principals provided under recent Ninth
11 Circuit case law, this is a matter of correcting a clerical
12 error and these two additional errors can be corrected under
13 FRBP 9024. The Defendants were actively engaged and
14 represented in the bankruptcy case, and in the adversary
15 proceedings there was never any confusion or doubt regarding
16 their identity. Although the complaint and *Default Judgment*
17 include a minor misspelling of the Defendants' names, the
18 adversary proceeding was brought against the Trust and Trustee
19 to recover payments made to those parties during the bankruptcy
20 case. The *Default Judgment* was entered by the Court to recover
21 those payments.²
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27 ² The court will not determine if the error could also be corrected
28 under FRBP 9023 because the judgment was entered on March 10, 2015, and
the 14 day deadline to file a motion to amend the judgment under FRCP
59(e) has expired.

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COURT SERVICE LIST

Martha G. Bronitsky, Chapter 13 Standing Trustee
c/o Leonidas G. Spanos
6140 Stoneridge Mall Rd # 250
Pleasanton, CA 94588

EVAN CHARLES ELDRIDGE
4301 KANSAS STREET
OAKLAND, CA 94619

DARYA SARA DRUCH, ATTY
1 KAISER PLAZA #480
OAKLAND, CA 94612

THE HASSAN AND FAY EHSAN TRUST
7166 ECHO RIDGE DRIVE
SAN JOSE, CA 95120

HASSAN EHSAN,
TRUSTEE OF THE HASSAN AND FAY EHSAN TRUST
7166 ECHO RIDGE DRIVE
SAN JOSE, CA 95120

Cathleen Cooper Moran
Moran Law Group, Inc.
1674 N Shoreline Blvd. #140
Mountain View, CA 94043-1375